

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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In re:

IMMUNE PHARMACEUTICALS, INC., et al.,¹

Debtors.

IMMUNE PHARMACEUTICALS, INC.; IMMUNE
PHARMACEUTICALS, LTD.; CYTOVIA, INC.;
IMMUNE ONCOLOGY PHARMACEUTICALS,
INC.; MAXIM PHARMACEUTICALS, INC.;
IMMUNE PHARMACEUTICALS USA CORP.;
and THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF IMMUNE
PHARMACEUTICALS, INC., et al.,

Plaintiffs,

Chapter 11

Case No. 19-13273 (VFP)

(Jointly Administered)

Adv. Pro. No.: 19-02033 (VFP)

¹ The Debtors in these chapter 11 cases and the last four digits their of each Debtor's taxpayer identification number are as follows: Immune Pharmaceutical, Inc. (1431); Immune Pharmaceuticals, Ltd.; Cytovia, Inc. (7805); Immune Oncology Pharmaceuticals, Inc.; Maxim Pharmaceuticals, Inc. (9983); and Immune Pharmaceuticals USA Corp. (9630).

vs.

**DISCOVER GROWTH FUND, LLC,
Defendant.**

ANSWER AND AFFIRMATIVE DEFENSES TO ADVERSARY COMPLAINT

By way of answer to the Adversary Complaint dated June 30, 2019 ("Complaint") filed by plaintiffs Immune Pharmaceuticals, Inc. ("IPI Debtor"); Immune Pharmaceuticals, Ltd.; Cytovia, Inc.; Immune Oncology Pharmaceuticals, Inc.; Maxim Pharmaceuticals, Inc.; Immune Pharmaceuticals USA Corp. (together with IPI Debtor, the "Debtors"); and The Official Committee Of Unsecured Creditors Of Immune Pharmaceuticals, Inc., et al. (collectively, "Plaintiffs"), defendant Discover Growth Fund, LLC ("Discover"), states as follows:

THE PARTIES

1. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and leaves Plaintiffs to their proofs.

2. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and leaves Plaintiffs to their proofs.

3. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and leaves Plaintiffs to their proofs.

4. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint and leaves Plaintiffs to their proofs.

5. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and leaves Plaintiffs to their proofs.

6. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and leaves Plaintiffs to their proofs.

7. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and leaves Plaintiffs to their proofs.

8. In response to the allegations of paragraph 8 of the Complaint, Discover states that it is a limited liability company organized under the laws of the United States Virgin Islands ("USVI").

JURISDICTION AND VENUE

9. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and leaves Plaintiffs to their proofs.

10. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and leaves Plaintiffs to their proofs.

11. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and leaves Plaintiffs to their proofs.

12. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and leaves Plaintiffs to their proofs.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and leaves Plaintiffs to their proofs.

14. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and leaves Plaintiffs to their proofs.

15. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and leaves Plaintiffs to their proofs.

16. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and leaves Plaintiffs to their proofs.

17. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and leaves Plaintiffs to their proofs.

18. In response to the allegations contained in paragraph 18 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain Declaration of John C. Kirkland dated February 25, 2019 and filed in the captioned chapter 11 case as Doc 11-3 ("Kirkland Dec. I") which is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

19. In response to the allegations contained in paragraph 19 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

20. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and leaves Plaintiffs to their proofs.

21. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and leaves Plaintiffs to their proofs.

22. In response to the allegations contained in paragraph 22 of the Complaint, Discover states that the same purport to characterize a certain "BrandYourself" website that is attached to the Complaint as Exhibit A, states that

the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

23. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and leaves Plaintiffs to their proofs.

24. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and leaves Plaintiffs to their proofs.

25. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and leaves Plaintiffs to their proofs.

26. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and leaves Plaintiffs to their proofs.

27. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint and leaves Plaintiffs to their proofs.

28. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and leaves Plaintiffs to their proofs.

29. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and leaves Plaintiffs to their proofs.

30. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint and leaves Plaintiffs to their proofs.

31. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint and leaves Plaintiffs to their proofs.

32. In response to the allegations contained in paragraph 32 of the Complaint, Discover states that the same purport to characterize a certain Order that is attached to the Complaint as Exhibit D, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

33. Discover denies the allegations of paragraph 33 of the Complaint.

34. In response to the allegations contained in paragraph 34 of the Complaint, Discover states that the same purport to characterize a certain Order that is attached to the Complaint as Exhibit E, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

35. In response to the allegations contained in paragraph 35 of the Complaint, Discover states that the same purport to characterize certain provisions of the Securities Exchange Act, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

36. In response to the allegations contained in paragraph 36 of the Complaint, Discover states that the same purport to characterize a certain Order

that is attached to the Complaint as Exhibit E, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

37. In response to the allegations contained in paragraph 37 of the Complaint, Discover states that the same purport to characterize a certain Order that is attached to the Complaint as Exhibit E, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

38. In response to the allegations contained in paragraph 38 of the Complaint, Discover states that the same purport to characterize the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

39. In response to the allegations contained in paragraph 39 of the Complaint, Discover states that the same purport to characterize a certain "Securities Purchase Agreement" (the "Agreement") and "Note", states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

40. In response to the allegations contained in paragraph 40 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith. Discover lacks sufficient knowledge or information to form a belief as to the truth of the

allegations contained in the second sentence of paragraph 40 of the Complaint and leaves Plaintiffs to their proofs.

41. Discover denies the allegations of paragraph 41 of the Complaint.

42. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint and leaves Plaintiffs to their proofs.

43. Discover denies the allegations of paragraph 43 of the Complaint.

44. In response to the allegations contained in paragraph 44 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

45. In response to the allegations contained in paragraph 45 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

46. In response to the allegations contained in paragraph 46 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

47. In response to the allegations contained in paragraph 47 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

48. In response to the allegations contained in paragraph 48 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

49. In response to the allegations contained in paragraph 49 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

50. In response to the allegations contained in paragraph 50 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

51. In response to the allegations contained in paragraph 51 of the Complaint, Discover states that the same purport to characterize statements set forth in the Note, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

52. In response to the allegations contained in paragraph 52 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

53. In response to the allegations contained in paragraph 53 of the Complaint, Discover states that the same purport to characterize statements set

forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

54. Discover denies the allegations of paragraph 54 of the Complaint.

55. Discover denies the allegations of paragraph 55 of the Complaint.

56. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint and leaves Plaintiffs to their proofs.

57. In response to the allegations contained in paragraph 57 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

58. Discover denies the allegations of paragraph 58 of the Complaint.

59. In response to the allegations contained in paragraph 59 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain "Debenture", states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith. Discover denies the second sentence of paragraph 59 of the Complaint.

60. In response to the allegations contained in paragraph 60 of the Complaint, Discover states that the same purport to characterize statements set forth in the Debenture, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith. Discover denies that the IPI Debtor's obligations to Discover were to be treated as equity and not debt.

61. Discover denies the allegations of paragraph 61 of the Complaint.

62. In response to the allegations contained in paragraph 62 of the Complaint, Discover states that the same purport to characterize statements set forth in the Debenture, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

63. In response to the allegations contained in paragraph 63 of the Complaint, Discover states that the same purport to characterize statements set forth in the Debenture, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

64. In response to the allegations contained in paragraph 64 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

65. In response to the allegations contained in paragraph 65 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

66. In response to the allegations contained in paragraph 66 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

67. In response to the allegations contained in paragraph 67 of the Complaint, Discover states that the same purport to characterize statements set

forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

68. In response to the allegations contained in paragraph 68 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

69. In response to the allegations contained in paragraph 69 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

70. Discover admits the allegations of paragraph 70 of the Complaint.

71. In response to the allegations contained in paragraph 71 of the Complaint, Discover states that the same purport to characterize statements set forth in the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

72. Discover denies the allegations of paragraph 72 of the Complaint.

73. Discover denies the allegations of paragraph 73 of the Complaint.

74. Discover denies the allegations of paragraph 74 of the Complaint.

75. Discover denies the allegations of paragraph 75 of the Complaint.

76. Discover denies the allegations of paragraph 76 of the Complaint.

77. Discover denies the allegations of paragraph 77 of the Complaint.

78. Discover denies the allegations of paragraph 78 of the Complaint.

79. Discover denies the allegations of paragraph 79 of the Complaint.

80. In response to the allegations contained in paragraph 80 of the Complaint, Discover states that the same purport to characterize statements set forth in the Debenture, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

81. Discover denies the allegations of paragraph 81 of the Complaint.

82. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint and leaves Plaintiffs to their proofs.

83. Discover denies the allegations of paragraph 83 of the Complaint.

84. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint and leaves Plaintiffs to their proofs.

85. Discover denies the allegations of paragraph 85 of the Complaint.

86. Discover denies the allegations of paragraph 86 of the Complaint.

87. In response to the allegations contained in paragraph 87 of the Complaint, Discover states that the same purport to characterize statements set forth in the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

88. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint and leaves Plaintiffs to their proofs.

89. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint and leaves Plaintiffs to their proofs.

90. Discover denies the allegations of paragraph 90 of the Complaint.

91. Discover denies the allegations of paragraph 91 of the Complaint.

92. In response to the allegations of paragraph 92 of the Complaint, Discover states that it never wants to be in possession of any material non-public information of any company.

93. Discover denies the allegations of paragraph 93 of the Complaint.

94. Discover denies the allegations of paragraph 94 of the Complaint.

95. Discover denies the allegations of paragraph 95 of the Complaint.

96. In response to the allegations contained in paragraph 96 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain "Notice of Sale of Collateral", states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

97. In response to the allegations contained in paragraph 97 of the Complaint, Discover states that the same purport to characterize statements set forth in a certain "subsequent notice" referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

98. Discover denies the allegations of paragraph 98 of the Complaint.

99. Discover denies the allegations of paragraph 99 of the Complaint.

100. Discover denies the allegations of paragraph 100 of the Complaint.

101. Discover denies the allegations of paragraph 101 of the Complaint.

102. Discover denies the allegations of paragraph 102 of the Complaint.

103. Discover denies the allegations of paragraph 103 of the Complaint.

104. Discover denies the allegations of paragraph 104 of the Complaint.

105. Discover denies the allegations of paragraph 105 of the Complaint.

106. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 106 of the Complaint and leaves Plaintiffs to their proofs.

107. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained paragraph 107 of the Complaint and leaves Plaintiffs to their proofs.

108. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 108 of the Complaint and leaves Plaintiffs to their proofs.

109. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint and leaves Plaintiffs to their proofs.

110. Discover denies the allegations of paragraph 110 of the Complaint.

111. Discover denies the allegations of paragraph 111 of the Complaint.

112. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 112 of the Complaint and leaves Plaintiffs to their proofs.

113. Discover denies the allegations of paragraph 113 of the Complaint.

114. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 114 of the Complaint and leaves Plaintiffs to their proofs.

115. In response to the allegations contained in paragraph 115 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain "Stay Relief Motion" referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

116. In response to the allegations contained in paragraph 116 of the Complaint, Discover states that the same purport to characterize statements set forth in the Stay Relief Motion referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

117. In response to the allegations contained in paragraph 117 of the Complaint, Discover states that the same purport to characterize statements set forth in Discover's proof of claim, Claim No. 37-2, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

118. In response to the allegations contained in paragraph 118 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain opposition referenced therein, states that the same are written

documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

119. In response to the allegations contained in paragraph 119 of the Complaint, Discover states that the same purport to characterize statements set forth in that certain "Schedule D" referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

120. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 120 of the Complaint and leaves Plaintiffs to their proofs.

121. In response to the allegations contained in paragraph 121 of the Complaint, Discover states that the same purport to characterize statements set forth in the "DG Ceplene Motion" and responses referenced therein, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

122. In response to the allegations contained in paragraph 122 of the Complaint, Discover states that the same purport to characterize statements set forth in the "DG Ceplene Motion" referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

123. In response to the allegations contained in paragraph 123 of the Complaint, Discover states that the same purport to characterize statements set forth in the "DG Ceplene Motion" referenced therein, states that the same is a

written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

124. In response to the allegations contained in paragraph 124 of the Complaint, Discover states that the same purport to characterize a decision of the Court on the record, states that the record speaks for itself, and denies said allegations to the extent inconsistent therewith.

125. Discover admits the allegations of paragraph 125 of the Complaint. The referenced proof of claim was amended on July 16, 2019 as Claim No. 37-2.

126. In response to the allegations contained in paragraph 126 of the Complaint, Discover states that the same purport to characterize statements set forth in that "Proof of Claim" referenced therein, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

FIRST COUNT

127. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

128. In response to the allegations contained in paragraph 128 of the Complaint, Discover states that the same purport to characterize Fed. R. Bankr. P. 7001, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

129. In response to the allegations contained in paragraph 129 of the Complaint, Discover states that the same purport to characterize the Debenture,

states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

130. In response to the allegations contained in paragraph 130 of the Complaint, Discover states that conditions precedent to the Note's maturity have not occurred, and accordingly denies said allegations.

131. Discover denies the allegations of paragraph 131 of the Complaint.

132. In response to the allegations contained in paragraph 132 of the Complaint, Discover states that the same purport to characterize Discover's stay relief motion, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

133. In response to the allegations contained in paragraph 133 of the Complaint, Discover states that the same purport to characterize the Kirkland Dec. I, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith. Discover denies that the interest rate exceeds the allowable interest rate.

134. Discover denies the allegations of paragraph 134 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the First Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

SECOND COUNT

135. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

136. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 136 of the Complaint and leaves Plaintiffs to their proofs.

137. Discover denies the allegations contained in paragraph 137 of the Complaint.

138. Discover denies the allegations contained in paragraph 138 of the Complaint.

139. Discover denies the allegations contained in paragraph 139 of the Complaint.

140. In response to the allegations contained in paragraph 140 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 548, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

141. In response to the allegations contained in paragraph 141 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

142. Discover denies the allegations contained in paragraph 142 of the Complaint.

143. Discover denies the allegations contained in paragraph 143 of the Complaint.

144. In response to the allegations contained in paragraph 144 of the Complaint, Discover states that the same purport to characterize the Agreement,

states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

145. In response to the allegations contained in paragraph 145 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

146. Discover denies the allegations contained in paragraph 146 of the Complaint.

147. Discover denies the allegations contained in paragraph 147 of the Complaint.

148. Discover denies the allegations contained in paragraph 148 of the Complaint.

149. Discover denies the allegations contained in paragraph 149 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Second Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

THIRD COUNT

150. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

151. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 151 of the Complaint and leaves Plaintiffs to their proofs.

152. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 152 of the Complaint and leaves Plaintiffs to their proofs.

153. Discover denies the allegations contained in paragraph 153 of the Complaint.

154. Discover denies the allegations contained in paragraph 154 of the Complaint.

155. Discover denies the allegations contained in paragraph 155 of the Complaint.

156. Discover denies the allegations contained in paragraph 156 of the Complaint.

157. Discover denies the allegations contained in paragraph 157 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Third Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

FOURTH COUNT

158. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

159. In response to the allegations contained in paragraph 159 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

160. In response to the allegations contained in paragraph 160 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

161. In response to the allegations contained in paragraph 161 of the Complaint, Discover states that the same purport to characterize Discover's UCC-1 filings, states that the same are written documents that speak for themselves, and denies said allegations to the extent inconsistent therewith.

162. In response to the allegations contained in paragraph 162 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

163. In response to the allegations contained in paragraph 163 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

164. In response to the allegations contained in paragraph 164 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

165. In response to the allegations contained in paragraph 165 of the Complaint, Discover states that the same purport to characterize the loan

documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

166. In response to the allegations contained in paragraph 166 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

WHEREFORE, Discover demands judgment dismissing the Fourth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

FIFTH COUNT

167. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

168. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 168 of the Complaint and leaves Plaintiffs to their proofs.

169. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 169 of the Complaint and leaves Plaintiffs to their proofs.

170. Discover denies the allegations contained in paragraph 170 of the Complaint.

171. In response to the allegations contained in paragraph 171 of the Complaint, Discover states that the same purport to characterize the "DG Ceplene

Motion" referenced therein, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

172. In response to the allegations contained in paragraph 172 of the Complaint, Discover states that the same purport to characterize the "DG Ceplene Motion" referenced therein, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

173. In response to the allegations contained in paragraph 173 of the Complaint, Discover states that the same purport to characterize the "DG Ceplene Motion" referenced therein, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

174. In response to the allegations contained in paragraph 174 of the Complaint, Discover states that the same purport to characterize the "DG Ceplene Motion" referenced therein, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

175. In response to the allegations contained in paragraph 175 of the Complaint, Discover states that the same purport to characterize a decision of the Court on the record, states that the record speaks for itself, and denies said allegations to the extent inconsistent therewith.

176. In response to the allegations contained in paragraph 176 of the Complaint, Discover states that the same purport to characterize a decision of the Court on the record, states that the record speaks for itself, and denies said allegations to the extent inconsistent therewith.

177. Discover denies the allegations contained in paragraph 177 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Fifth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

SIXTH COUNT

178. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

179. In response to the allegations contained in paragraph 179 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 544, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

180. In response to the allegations contained in paragraph 180 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 1107, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

181. In response to the allegations contained in paragraph 181 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

182. In response to the allegations contained in paragraph 182 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 548, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

WHEREFORE, Discover demands judgment dismissing the Sixth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

SEVENTH COUNT

183. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

184. In response to the allegations contained in paragraph 184 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 549, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

185. In response to the allegations contained in paragraph 185 of the Complaint, Discover states that the same purport to characterize the loan documents in issue, states that the same are written documents that speaks for themselves, and denies said allegations to the extent inconsistent therewith.

186. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 186 of the Complaint and leaves Plaintiffs to their proofs.

187. Discover denies the allegations contained in paragraph 187 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Seventh Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

EIGHTH COUNT

188. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

189. In response to the allegations contained in paragraph 189 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

190. In response to the allegations contained in paragraph 190 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

191. Discover denies the allegations contained in paragraph 191 of the Complaint.

192. Discover denies the allegations contained in paragraph 192 of the Complaint.

193. In response to the allegations contained in paragraph 193 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

194. Discover denies the allegations contained in paragraph 194 of the Complaint.

195. Discover denies the allegations contained in paragraph 195 of the Complaint.

196. In response to the allegations contained in paragraph 196 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

197. Discover denies the allegations contained in paragraph 197 of the Complaint.

198. In response to the allegations contained in paragraph 198 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

199. Discover denies the allegations contained in paragraph 199 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Eighth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

NINTH COUNT

200. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

201. In response to the allegations contained in paragraph 201 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

202. Discover denies the allegations contained in paragraph 202 of the Complaint.

203. In response to the allegations contained in paragraph 203 of the Complaint, Discover states that conditions precedent to the Note's maturity have not occurred, and accordingly denies said allegations.

204. Discover denies the allegations contained in paragraph 204 of the Complaint.

205. Discover denies the allegations contained in paragraph 205 of the Complaint.

206. Discover denies the allegations contained in paragraph 206 of the Complaint.

207. Discover denies the allegations contained in paragraph 207 of the Complaint.

208. In response to the allegations contained in paragraph 208 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

209. Discover denies the allegations contained in paragraph 209 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Ninth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

TENTH COUNT

210. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

211. In response to the allegations contained in paragraph 211 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

212. In response to the allegations contained in paragraph 212 of the Complaint, Discover states that the same purport to characterize and misstates the Debenture, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

213. Discover denies the allegations contained in paragraph 213 of the Complaint.

214. Discover denies the allegations contained in paragraph 214 of the Complaint.

215. In response to the allegations contained in paragraph 215 of the Complaint, Discover states that the same purport to characterize 11 U.S.C. § 510, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

216. Discover denies the allegations contained in paragraph 216 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Tenth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

ELEVENTH COUNT

217. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

218. In response to the allegations contained in paragraph 218 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

219. In response to the allegations contained in paragraph 219 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

220. Discover denies the allegations contained in paragraph 220 of the Complaint.

221. Discover denies the allegations contained in paragraph 221 of the Complaint.

222. Discover denies the allegations contained in paragraph 222 of the Complaint.

223. Discover denies the allegations contained in paragraph 223 of the Complaint.

224. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 224 of the Complaint and leaves Plaintiffs to their proofs.

225. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 225 of the Complaint and leaves Plaintiffs to their proofs.

226. Discover denies the allegations contained in paragraph 226 of the Complaint.

227. Discover denies the allegations contained in paragraph 227 of the Complaint.

228. Discover denies the allegations contained in paragraph 228 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Eleventh Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable .

TWELFTH COUNT

229. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

230. In response to the allegations contained in paragraph 230 of the Complaint, Discover states that the same purport to characterize the Agreement, states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

231. In response to the allegations contained in paragraph 231 of the Complaint, Discover states that the same purport to characterize the Agreement (as well as legal doctrine), states that the same is a written document that speaks for itself, and denies said allegations to the extent inconsistent therewith.

232. Discover denies the allegations contained in paragraph 232 of the Complaint.

233. Discover denies the allegations contained in paragraph 233 of the Complaint.

234. Discover denies the allegations contained in paragraph 234 of the Complaint.

235. Discover denies the allegations contained in paragraph 235 of the Complaint.

236. Discover denies the allegations contained in paragraph 236 of the Complaint.

237. Discover denies the allegations contained in paragraph 237 of the Complaint.

238. Discover denies the allegations contained in paragraph 238 of the Complaint.

239. Discover denies the allegations contained in paragraph 239 of the Complaint.

240. Discover denies the allegations contained in paragraph 240 of the Complaint.

241. Discover denies the allegations contained in paragraph 241 of the Complaint.

242. Discover denies the allegations contained in paragraph 242 of the Complaint.

243. Discover denies the allegations contained in paragraph 243 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Twelfth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

THIRTEENTH COUNT

244. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

245. Discover denies the allegations contained in paragraph 245 of the Complaint.

246. Discover denies the allegations contained in paragraph 246 of the Complaint.

247. Discover denies the allegations contained in paragraph 247 of the Complaint.

248. Discover denies the allegations contained in paragraph 248 of the Complaint.

WHEREFORE, Discover demands judgment dismissing the Thirteenth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

THIRTEENTH COUNT [DUPLICATE]

249. Discover restates its foregoing responses to the allegations of the Complaint as if set forth in full herein.

250. Discover lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 250 of the Complaint and leaves Plaintiffs to their proofs.

WHEREFORE, Discover demands judgment dismissing the duplicate Thirteenth Count of the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim or cause of action upon which relief may be granted against Discover.

SECOND AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by lack and/or failure of consideration.

FIFTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by Plaintiffs as a result of claims asserted in the Complaint against Discover were caused by acts or omissions of Plaintiffs and/or third parties over whom Discover exercised no control, had no right of control and for whose actions Discover is not and cannot be responsible or liable.

SIXTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the doctrine of accord and satisfaction.

EIGHTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

No contractual or other factual basis exists for the claims asserted in the Complaint.

TENTH AFFIRMATIVE DEFENSE

Discover has neither breached nor violated any duty or obligation which may be found to have been owed to any of the Debtors or any other person or entity.

ELEVENTH AFFIRMATIVE DEFENSE

At all relevant times, Discover acted within its rights under the Agreement, the Debenture, and related contracts and loan documents. Accordingly, the claims asserted in the Complaint are barred.

FOURTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, the Debtors were not insolvent at the time of the loan transaction at issue.

FIFTEENTH AFFIRMATIVE DEFENSE

The alleged transfer(s) made by the Debtors to Discover are not avoidable because Discover took same for value in good faith, and without knowledge of the voidability of the transfer(s) as set forth in 11 U.S.C. § 550(b)(1).

SIXTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are predicated upon a misinterpretation of pertinent statutory and common law, and/or a misstatement of applicable provisions of the loan documents in issue.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the Debtors' breach of contract and the implied covenant of good faith and fair dealing.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the doctrine of setoff and/or recoupment as against Discover.

NINETEENTH AFFIRMATIVE DEFENSE

The alleged transfer(s) made by the Debtors, inclusive of IPI Debtor, to Discover are not avoidable pursuant to 11 U.S.C. § 548 because (i) Discover took same for value in good faith and had no reasonable cause to believe the Debtors were insolvent; (ii) the Debtors did not make the alleged transfer(s) with actual intent to hinder, delay or defraud their creditors, received reasonably equivalent value for the transfer(s), were not engaged (and were not about to engage) in business for which their assets were unreasonably small capital, were not at the time of and did not become insolvent as a result of the transfer(s), and should not have believed that they would incur debts beyond its ability to repay; and (iii) Plaintiffs cannot demonstrate the Debtors' insolvency.

TWENTIETH AFFIRMATIVE DEFENSE

No factual or legal basis exists upon which the Court can equitably subordinate Discover's claims against the Debtors, inclusive of IPI Debtor, and no conduct of Discover resulted in harm to the Debtors and/or their creditors. Accordingly, equitable subordination of Discover's claims would be inconsistent with the provisions of the United States Bankruptcy Code.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred by the Debtors' unclean hands as a result of their fraudulent misrepresentations in connection with the subject transaction.

TWENTY-SECOND AFFIRMATIVE DEFENSE

In response to the Fed. R. Bankr. P. 3007(b) claim objection set forth in paragraphs 249-250 of the Complaint, Discover states and maintains that its claim filed in this case as Claim No. 37-2 is a valid, enforceable, senior and first-priority secured claim for the reasons stated in Claim No. 37-2 and by proofs to be adduced in this adversary proceeding, and that, accordingly, Plaintiffs' duplicate Thirteenth Count is meritless and should be dismissed with prejudice.

RESERVATION OF RIGHTS

Discover reserves the right to assert any further defenses to which it learns it is entitled.

WHEREFORE, Discover demands judgment dismissing the Complaint with prejudice, for attorneys' fees and costs of suit, and for such other relief as the Court deems just and equitable.

GIBBONS P.C
Attorneys for the Defendant,
Discover Growth Fund, LLC

By: /s/ Dale E. Barney
Dale E. Barney

Dated: August 2, 2019
Newark, New Jersey

